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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/656,053      | 09/05/2003  | Juan G. Guevara JR.  | ARAG:003USD1        | 3101             |

7590 01/27/2006

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EXAMINER

SAJJADI, FEREDOUN GHOTB

ART UNIT PAPER NUMBER

1633

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                  |                                |  |
|------------------------------|----------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/656,053    | Applicant(s)<br>GUEVARA ET AL. |  |
|                              | Examiner<br>Fereydoun G. Sajjadi | Art Unit<br>1633               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Sep. 5, 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-19 and 64-66 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 20-63 were cancelled and claim 7 was amended by the preliminary amendment of September 5, 2003. Claims 1-19 and 64-66 are pending in this application.

#### ***Election/Restrictions***

Restriction to one of the following species is required under 35 U.S.C. 121:

This application contains claims directed to the following groups of patentably distinct species of the claimed invention:

Applicant is required to choose a single binding domain, as recited in claims 1, 65 and 66. The LDL and VLDL nucleic acid binding domains are structurally distinct and likely also functionally distinct. In addition, a nucleic acid comprising an LDL or VLDL binding sequences will also likely vary in its sequence composition, based on the particular polypeptide sequence bound. Moreover, the LDL and VLDL are each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single polypeptide, as recited in claim 7. The different globin polypeptides, GM-CSF, TNF, interleukins, growth factors etc. are each distinct molecules, having different structures and biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single oncogene, as recited in claims 9. The ras, myc, neu, raf, erb etc. oncogenes are each distinct molecules, having different structures and biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single promoter, as recited in claims 10. The CMV, IE, LTR, SV40, HSV tk, etc. promoters are each distinct nucleic acids, having different sequences and biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

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Applicant is required to choose a single lipoprotein, as recited in claims 12. The apoA1, acat, apoE etc. lipoproteins are each distinct species of lipoproteins, having different structures and biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single animal species, as recited in claims 13. The human, rat and baboon apoB100 are each distinct species of lipoproteins, having different structures and biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single nucleic acid binding domain, as recited in claims 15. The praline pipe helix, ISGF3 $\gamma$ , SREBP etc, binding motifs are each distinct peptide sequence, having different structures and likely also different binding activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single SEQ ID NO, as recited in claims 16. The different SEQ ID NOS corresponding to the different binding domains are each distinct sequences, having different biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required to choose a single SEQ ID NO, as recited in claims 19. The different SEQ ID NOS corresponding to different nuclear localization sequences are each distinct sequences, having distinct biological activities, each capable of separate use, requiring non-coextensive search and examination, creating an undue burden on the examiner.

Applicant is required under 35 U.S.C. §121 to elect a single disclosed species for each of the groups above, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 7, 9-10, 12-13, 15-16, 19, 65-66 are generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, fall into different statutory classes of invention, and are separately classified and searched, and/or because of the patentably distinct species are listed above, it would be unduly burdensome for the examiner to search and examine all of the subject matter being sought in the presently pending claims, and thus, restriction for examination purposes as indicated is proper.

Applicant is advised that the response for this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications regarding the formalities should be directed to Patent Analyst William Phillips, whose telephone number is (571) 272-0548.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fereydoun G. Sajjadi whose telephone number is **(571) 272-3311**. The examiner can normally be reached Monday through Friday, between 7:00 am-4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave T. Nguyen can be reached on **(571) 272-0731**. The fax phone number for the organization where this application or proceeding is assigned is **(571) 273-8300**. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

For all other customer support, please call the USPTO Call Center (UCC) at **(800) 786-9199**.

Fereydoun G. Sajjadi, Ph.D.  
Examiner, USPTO, AU 1633



**DAVE TRONG NGUYEN**  
**SUPERVISORY PATENT EXAMINER**